

Bill No. SB 456

Barcode 832970

591-1169-06

Proposed Committee Substitute by the Committee on Criminal Justice

1                               A bill to be entitled  
2           An act relating to juvenile justice; amending  
3           s. 985.215, F.S.; requiring specified home  
4           detention to be with electronic monitoring,  
5           subject to an appropriation; amending s.  
6           985.231, F.S.; requiring specified home  
7           detention to be with electronic monitoring,  
8           subject to an appropriation; amending s.  
9           985.31, F.S.; deleting a requirement for a  
10          report on serious or habitual juvenile  
11          offenders; amending s. 985.311, F.S.; deleting  
12          a requirement for a report on intensive  
13          residential treatment; amending s. 985.3141,  
14          F.S.; providing that a youth's willful failure  
15          to return to a residential commitment facility  
16          within the time authorized for temporary  
17          release constitutes escape subject to  
18          penalties; amending s. 985.317, F.S.; deleting  
19          a requirement for a report on literacy programs  
20          for juvenile offenders; providing an effective  
21          date.

22  
23 Be It Enacted by the Legislature of the State of Florida:

24  
25           Section 1. Paragraph (h) of subsection (2) of section  
26 985.215, Florida Statutes, is amended to read:

27           985.215 Detention.--

28           (2) Subject to the provisions of subsection (1), a  
29 child taken into custody and placed into nonsecure or home  
30 detention care or detained in secure detention care prior to a  
31 detention hearing may continue to be detained by the court if:

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1           (h) The child is alleged to have violated the  
2 conditions of the child's probation or conditional release  
3 supervision. However, a child detained under this paragraph  
4 shall ~~may~~ be held ~~only~~ in a consequence unit as provided in s.  
5 985.231(1)(a)1.c., except that, if a consequence unit is not  
6 available, the child shall be placed on home detention.  
7 Subject to legislative appropriation, home detention under  
8 this paragraph shall be with electronic monitoring.

9  
10 A child who meets any of these criteria and who is ordered to  
11 be detained pursuant to this subsection shall be given a  
12 hearing within 24 hours after being taken into custody. The  
13 purpose of the detention hearing is to determine the existence  
14 of probable cause that the child has committed the delinquent  
15 act or violation of law with which he or she is charged and  
16 the need for continued detention, except where the child is  
17 alleged to have absconded from a nonresidential commitment  
18 program in which case the court, at the detention hearing,  
19 shall order that the child be released from detention and  
20 returned to his or her nonresidential commitment program.  
21 Unless a child is detained under paragraph (d) or paragraph  
22 (e), the court shall use the results of the risk assessment  
23 performed by the juvenile probation officer and, based on the  
24 criteria in this subsection, shall determine the need for  
25 continued detention. A child placed into secure, nonsecure, or  
26 home detention care may continue to be so detained by the  
27 court pursuant to this subsection. If the court orders a  
28 placement more restrictive than indicated by the results of  
29 the risk assessment instrument, the court shall state, in  
30 writing, clear and convincing reasons for such placement.

31 Except as provided in s. 790.22(8) or in subparagraph

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1 (10)(a)2., paragraph (10)(b), paragraph (10)(c), or paragraph  
2 (10)(d), when a child is placed into secure or nonsecure  
3 detention care, or into a respite home or other placement  
4 pursuant to a court order following a hearing, the court order  
5 must include specific instructions that direct the release of  
6 the child from such placement no later than 5 p.m. on the last  
7 day of the detention period specified in paragraph (5)(b) or  
8 paragraph (5)(c), or subparagraph (10)(a)1., whichever is  
9 applicable, unless the requirements of such applicable  
10 provision have been met or an order of continuance has been  
11 granted pursuant to paragraph (5)(f).

12 Section 2. Paragraph (a) of subsection (1) of section  
13 985.231, Florida Statutes, is amended to read:

14 985.231 Powers of disposition in delinquency cases.--

15 (1)(a) The court that has jurisdiction of an  
16 adjudicated delinquent child may, by an order stating the  
17 facts upon which a determination of a sanction and  
18 rehabilitative program was made at the disposition hearing:

19 1. Place the child in a probation program or a  
20 postcommitment probation program under the supervision of an  
21 authorized agent of the department or of any other person or  
22 agency specifically authorized and appointed by the court,  
23 whether in the child's own home, in the home of a relative of  
24 the child, or in some other suitable place under such  
25 reasonable conditions as the court may direct. A probation  
26 program for an adjudicated delinquent child must include a  
27 penalty component such as restitution in money or in kind,  
28 community service, a curfew, revocation or suspension of the  
29 driver's license of the child, or other nonresidential  
30 punishment appropriate to the offense and must also include a  
31 rehabilitative program component such as a requirement of

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1 participation in substance abuse treatment or in school or  
2 other educational program. If the child is attending or is  
3 eligible to attend public school and the court finds that the  
4 victim or a sibling of the victim in the case is attending or  
5 may attend the same school as the child, the court placement  
6 order shall include a finding pursuant to the proceedings  
7 described in s. 985.23(1)(d). Upon the recommendation of the  
8 department at the time of disposition, or subsequent to  
9 disposition pursuant to the filing of a petition alleging a  
10 violation of the child's conditions of postcommitment  
11 probation, the court may order the child to submit to random  
12 testing for the purpose of detecting and monitoring the use of  
13 alcohol or controlled substances.

14       a. A classification scale for levels of supervision  
15 shall be provided by the department, taking into account the  
16 child's needs and risks relative to probation supervision  
17 requirements to reasonably ensure the public safety. Probation  
18 programs for children shall be supervised by the department or  
19 by any other person or agency specifically authorized by the  
20 court. These programs must include, but are not limited to,  
21 structured or restricted activities as described in this  
22 subparagraph, and shall be designed to encourage the child  
23 toward acceptable and functional social behavior. If  
24 supervision or a program of community service is ordered by  
25 the court, the duration of such supervision or program must be  
26 consistent with any treatment and rehabilitation needs  
27 identified for the child and may not exceed the term for which  
28 sentence could be imposed if the child were committed for the  
29 offense, except that the duration of such supervision or  
30 program for an offense that is a misdemeanor of the second  
31 degree, or is equivalent to a misdemeanor of the second

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1 degree, may be for a period not to exceed 6 months. When  
2 restitution is ordered by the court, the amount of restitution  
3 may not exceed an amount the child and the parent or guardian  
4 could reasonably be expected to pay or make. A child who  
5 participates in any work program under this part is considered  
6 an employee of the state for purposes of liability, unless  
7 otherwise provided by law.

8       b. The court may conduct judicial review hearings for  
9 a child placed on probation for the purpose of fostering  
10 accountability to the judge and compliance with other  
11 requirements, such as restitution and community service. The  
12 court may allow early termination of probation for a child who  
13 has substantially complied with the terms and conditions of  
14 probation.

15       c. If the conditions of the probation program or the  
16 postcommitment probation program are violated, the department  
17 or the state attorney may bring the child before the court on  
18 a petition alleging a violation of the program. Any child who  
19 violates the conditions of probation or postcommitment  
20 probation must be brought before the court if sanctions are  
21 sought. A child taken into custody under s. 985.207 for  
22 violating the conditions of probation or postcommitment  
23 probation shall be held in a consequence unit if such a unit  
24 is available. The child shall be afforded a hearing within 24  
25 hours after being taken into custody to determine the  
26 existence of probable cause that the child violated the  
27 conditions of probation or postcommitment probation. A  
28 consequence unit is a secure facility specifically designated  
29 by the department for children who are taken into custody  
30 under s. 985.207 for violating probation or postcommitment  
31 probation, or who have been found by the court to have

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1 violated the conditions of probation or postcommitment  
2 probation. If the violation involves a new charge of  
3 delinquency, the child may be detained under s. 985.215 in a  
4 facility other than a consequence unit. If the child is not  
5 eligible for detention for the new charge of delinquency, the  
6 child may be held in the consequence unit pending a hearing  
7 and is subject to the time limitations specified in s.  
8 985.215. If the child denies violating the conditions of  
9 probation or postcommitment probation, the court shall appoint  
10 counsel to represent the child at the child's request. Upon  
11 the child's admission, or if the court finds after a hearing  
12 that the child has violated the conditions of probation or  
13 postcommitment probation, the court shall enter an order  
14 revoking, modifying, or continuing probation or postcommitment  
15 probation. In each such case, the court shall enter a new  
16 disposition order and, in addition to the sanctions set forth  
17 in this paragraph, may impose any sanction the court could  
18 have imposed at the original disposition hearing. If the child  
19 is found to have violated the conditions of probation or  
20 postcommitment probation, the court may:

21 (I) Place the child in a consequence unit in that  
22 judicial circuit, ~~if available,~~ for up to 5 days for a first  
23 violation, and up to 15 days for a second or subsequent  
24 violation, or, if a consequence unit is not available, the  
25 court may place the child on home detention, which shall,  
26 subject to legislative appropriation, include electronic  
27 monitoring.

28 ~~(II) Place the child on home detention with electronic~~  
29 ~~monitoring. However, this sanction may be used only if a~~  
30 ~~residential consequence unit is not available.~~

31 ~~(II)~~(III) Modify or continue the child's probation

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1 program or postcommitment probation program.

2 ~~(III)~~~~(IV)~~ Revoke probation or postcommitment probation  
3 and commit the child to the department.

4 d. Notwithstanding s. 743.07 and paragraph (d), and  
5 except as provided in s. 985.31, the term of any order placing  
6 a child in a probation program must be until the child's 19th  
7 birthday unless he or she is released by the court, on the  
8 motion of an interested party or on its own motion.

9 2. Commit the child to a licensed child-caring agency  
10 willing to receive the child, but the court may not commit the  
11 child to a jail or to a facility used primarily as a detention  
12 center or facility or shelter.

13 3. Commit the child to the department at a  
14 restrictiveness level defined in s. 985.03. Such commitment  
15 must be for the purpose of exercising active control over the  
16 child, including, but not limited to, custody, care, training,  
17 urine monitoring, and treatment of the child and release of  
18 the child from residential commitment into the community in a  
19 postcommitment nonresidential conditional release program. If  
20 the child is eligible to attend public school following  
21 commitment and the court finds that the victim or a sibling of  
22 the victim in the case is or may be attending the same school  
23 as the child, the commitment order shall include a finding  
24 pursuant to the proceedings described in s. 985.23(1)(d). If  
25 the child is not successful in the conditional release  
26 program, the department may use the transfer procedure under  
27 s. 985.404. Notwithstanding s. 743.07 and paragraph (d), and  
28 except as provided in s. 985.31, the term of the commitment  
29 must be until the child is discharged by the department or  
30 until he or she reaches the age of 21.

31 4. Revoke or suspend the driver's license of the

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1 child.

2           5. Require the child and, if the court finds it  
3 appropriate, the child's parent or guardian together with the  
4 child, to render community service in a public service  
5 program.

6           6. As part of the probation program to be implemented  
7 by the department, or, in the case of a committed child, as  
8 part of the community-based sanctions ordered by the court at  
9 the disposition hearing or before the child's release from  
10 commitment, order the child to make restitution in money,  
11 through a promissory note cosigned by the child's parent or  
12 guardian, or in kind for any damage or loss caused by the  
13 child's offense in a reasonable amount or manner to be  
14 determined by the court. The clerk of the circuit court shall  
15 be the receiving and dispensing agent. In such case, the court  
16 shall order the child or the child's parent or guardian to pay  
17 to the office of the clerk of the circuit court an amount not  
18 to exceed the actual cost incurred by the clerk as a result of  
19 receiving and dispensing restitution payments. The clerk shall  
20 notify the court if restitution is not made, and the court  
21 shall take any further action that is necessary against the  
22 child or the child's parent or guardian. A finding by the  
23 court, after a hearing, that the parent or guardian has made  
24 diligent and good faith efforts to prevent the child from  
25 engaging in delinquent acts absolves the parent or guardian of  
26 liability for restitution under this subparagraph.

27           7. Order the child and, if the court finds it  
28 appropriate, the child's parent or guardian together with the  
29 child, to participate in a community work project, either as  
30 an alternative to monetary restitution or as part of the  
31 rehabilitative or probation program.

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1           8. Commit the child to the department for placement in  
2 a program or facility for serious or habitual juvenile  
3 offenders in accordance with s. 985.31. Any commitment of a  
4 child to a program or facility for serious or habitual  
5 juvenile offenders must be for an indeterminate period of  
6 time, but the time may not exceed the maximum term of  
7 imprisonment that an adult may serve for the same offense. The  
8 court may retain jurisdiction over such child until the child  
9 reaches the age of 21, specifically for the purpose of the  
10 child completing the program.

11           9. In addition to the sanctions imposed on the child,  
12 order the parent or guardian of the child to perform community  
13 service if the court finds that the parent or guardian did not  
14 make a diligent and good faith effort to prevent the child  
15 from engaging in delinquent acts. The court may also order the  
16 parent or guardian to make restitution in money or in kind for  
17 any damage or loss caused by the child's offense. The court  
18 shall determine a reasonable amount or manner of restitution,  
19 and payment shall be made to the clerk of the circuit court as  
20 provided in subparagraph 6.

21           10. Subject to specific appropriation, commit the  
22 juvenile sexual offender to the department for placement in a  
23 program or facility for juvenile sexual offenders in  
24 accordance with s. 985.308. Any commitment of a juvenile  
25 sexual offender to a program or facility for juvenile sexual  
26 offenders must be for an indeterminate period of time, but the  
27 time may not exceed the maximum term of imprisonment that an  
28 adult may serve for the same offense. The court may retain  
29 jurisdiction over a juvenile sexual offender until the  
30 juvenile sexual offender reaches the age of 21, specifically  
31 for the purpose of completing the program.

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Section 3. Paragraph (a) of subsection (1) of section 985.31, Florida Statutes, is amended to read:

985.31 Serious or habitual juvenile offender.--

(1) ASSESSMENT AND TREATMENT SERVICES.--Pursuant to the provisions of this chapter and the establishment of appropriate program guidelines and standards, contractual instruments, which shall include safeguards of all constitutional rights, shall be developed as follows:

(a) The department shall provide for:

1. The oversight of implementation of assessment and treatment approaches.

2. The identification and prequalification of appropriate individuals or not-for-profit organizations, including minority individuals or organizations when possible, to provide assessment and treatment services to serious or habitual delinquent children.

3. The monitoring and evaluation of assessment and treatment services for compliance with the provisions of this chapter and all applicable rules and guidelines pursuant thereto.

~~4. The development of an annual report on the performance of assessment and treatment to be presented to the Governor, the Attorney General, the President of the Senate, the Speaker of the House of Representatives, and the Auditor General no later than January 1 of each year.~~

Section 4. Paragraph (a) of subsection (1) of section 985.311, Florida Statutes, is amended to read:

985.311 Intensive residential treatment program for offenders less than 13 years of age.--

(1) ASSESSMENT AND TREATMENT SERVICES.--Pursuant to the provisions of this chapter and the establishment of

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appropriate program guidelines and standards, contractual instruments, which shall include safeguards of all constitutional rights, shall be developed for intensive residential treatment programs for offenders less than 13 years of age as follows:

(a) The department shall provide for:

1. The oversight of implementation of assessment and treatment approaches.

2. The identification and prequalification of appropriate individuals or not-for-profit organizations, including minority individuals or organizations when possible, to provide assessment and treatment services to intensive offenders less than 13 years of age.

3. The monitoring and evaluation of assessment and treatment services for compliance with the provisions of this chapter and all applicable rules and guidelines pursuant thereto.

~~4. The development of an annual report on the performance of assessment and treatment to be presented to the Governor, the Attorney General, the President of the Senate, the Speaker of the House of Representatives, the Auditor General, and the Office of Program Policy Analysis and Government Accountability no later than January 1 of each year.~~

Section 5. Section 985.3141, Florida Statutes, is amended to read:

985.3141 Escapes from secure detention or residential commitment facility.--An escape from:

(1) Any secure detention facility maintained for the temporary detention of children, pending adjudication, disposition, or placement;

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(2) Any residential commitment facility described in s. 985.03(46), maintained for the custody, treatment, punishment, or rehabilitation of children found to have committed delinquent acts or violations of law; or

(3) Lawful transportation to or from any such secure detention facility or residential commitment facility,

constitutes escape within the intent and meaning of s. 944.40 and is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For purposes of this section, escape from a residential commitment facility as provided for in subsection (2) includes a youth's willful failure to return to a residential commitment facility within the time authorized for a temporary release.

Section 6. Subsection (5) of section 985.317, Florida Statutes, is amended to read:

985.317 Literacy programs for juvenile offenders.--

~~(5) EVALUATION AND REPORT.--The department, in consultation with the Department of Education, shall develop and implement an evaluation of the literacy program in order to determine the impact of the programs on recidivism. The department shall submit an annual report on the implementation and progress of the programs to the President of the Senate and the Speaker of the House of Representatives by January 1 of each year.~~

Section 7. This act shall take effect July 1, 2006.